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BY EMAIL

September 10, 2008

Ross Johnson, Commissioner and Chair
Commissioners Timothy A. Hodson, A. Eugene Huguenin, Jr.,
Robert Leidigh, and Ray Remy
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
428 J Street
Suite 800
Sacramento, California 95814-2329

Re: Prenotice Discussion of Proposed Regulation 18420.1—September 11, 2008
Agenda, Item 8

Dear Chair Johnson and Members of the Commission:

On behalf of the League of California Cities, I write to request that the Commission not authorize noticing of Proposed Regulation 18420.1, which proposes to expand the definition of “expenditure” with respect to public agency communications on pending ballot measures.

As the Staff Report acknowledges, the issue of the expenditure of public funds for communications on pending ballot measures is currently before the California Supreme Court in *Vargas v. City of Salinas*, Case No. S140911, and has been for nearly two years. The League, along with CSAC, is participating before the Supreme Court as amicus curiae in support of the City of Salinas. We believe that the Commission should refrain from initiating any regulatory proceedings until after the Supreme Court issues its opinion in *Vargas*.

As the Commission is likely aware, the Legislature, as a matter of course, will refrain from legislating on an issue that is currently before the courts. The Legislature recognizes that such deference is appropriate under the separation of powers doctrine. Similarly, the League believes it appropriate that an executive branch agency, such as the FPPC, should defer any regulatory proceeding on an issue that is currently before the courts, which is the case we have here.

The Supreme Court’s grant of review in *Vargas* depublished the opinion issued by the Sixth District Court of Appeal. Consequently, the Supreme Court’s grant of review

restored the legal status quo pending the Supreme Court's decision. This means that public agencies cannot cite to the Sixth District's opinion as precedent, or otherwise rely on it as support for any expenditure of public funds. Therefore, the League does not see a need for the Commission to consider any regulatory changes in the interim before the Supreme Court issues its opinion in *Vargas*.

Any regulatory changes at this point have the potential to cause confusion for public agencies as to what rules govern the proper expenditure of public funds on communications that may relate to pending ballot measures. Further, the Supreme Court's eventual decision may require the Commission to amend or repeal any new regulation in order to harmonize the Commission's regulations with the legal standard that the Supreme Court will likely announce in its decision. For these reasons, the League believes that the better practice would be for the Commission to delay considering any regulatory changes until after the Supreme Court issue its opinion in *Vargas*.

The League has taken a leadership role in educating our membership on participating in ballot measure campaign activities. As part of that educational effort the League makes available to our members the attached brochure, "Working on a Ballot Measure Campaign: Some Rules for Public Officials." The League will continue our educational efforts in this area.

Thank you for giving the League of California Cities the opportunity to address our concerns.

Very truly yours,

A handwritten signature in cursive script that reads "Patrick Whitnell". The signature is written in dark ink and is positioned above the typed name of the signatory.

Patrick Whitnell, General Counsel

c: Dwight Stenbakken, Deputy Executive Director
Michael Martello, Chair, FPPC Committee

A RULE OF THUMB:

*A city official should
always first consult
with the city's attorney
concerning the propriety
of any given course
of conduct.*

Need more information? To learn more about the League's ballot measure, and rules for city officials, please visit the League's website at www.cacities.org.

The League thanks Steven Lucas of the law firm Nielsen, Merhamer, Parrinello, Mueller & Naylor, LLP, for his contributions to this publication.



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WORKING TOGETHER
BALLOT MEASURE CAMPAIGN
**SOME RULES FOR
CITY OFFICIALS**

DO'S AND DON'TS

FOR CITY OFFICIALS AND CITY EMPLOYEES

THE DON'TS: City officials and city employees may NOT:

DON'T • Distribute campaign literature through the city's internal mail system.

DON'T • Place campaign literature on employee bulletin boards, on the city's web page, or elsewhere on city government premises.

DON'T • Make public appearances speaking in favor of the ballot measure during compensated work hours.

DON'T • Make telephone calls about the campaign during compensated work hours.

DON'T • Walk precincts, draft campaign ads, or perform other campaign tasks during compensated work hours, or assign subordinates to do same.

DON'T • Add a link from the city website to a campaign website.

DON'T • Send or receive campaign-related emails on city computers.

DON'T • Urge other city employees to vote for the measure during compensated work hours.

DON'T • Use city copy machines, telephones, fax machines, computers, stationery, etc. for campaign purposes.

THE DO'S: City officials and city employees MAY:

• Work on the campaign during their personal time, including lunch hours, coffee breaks, vacations, etc.

• Make a campaign contribution to a ballot measure campaign committee using personal funds, and/or attend a campaign fundraiser during personal time.

• Make public appearances during personal time advocating the ballot measure.

• Have the city council adopt a resolution that officially endorses the ballot measure and confirms the prohibition on using government funds for political purposes at a public meeting.

"City officials interested in working for the League ballot measure, including participating in CITIPAC fundraising, should start by contacting their League Regional Representative."

There are two simple, but very important rules city officials and employees should follow if they want to get involved in campaign activities in support of the League's ballot measure to strengthen constitutional protections for local revenues.

DON'T USE PUBLIC FUNDS

All contributions to the ballot measure of your time and resources must be made with non-public funds. This means no public facilities or equipment (phones, computers, email accounts, vehicles, copy machines or any other equipment) may be used to plan or promote ballot measure activities, including fundraising. No public funds may be used in support of your campaign activities.

CAMPAIGN ON YOUR OWN TIME

Keep good records. Track your time and your use of private equipment used in ballot measure activities, so you are able to document that no public funds were used.

City officials interested in working for the League ballot measure, including participating in CITIPAC fundraising, should start by contacting their League Regional Representative.